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MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

October Term 1974

No. ~~74~~ - 5382

H. G. SKIDMORE,

Petitioner,

v.

NATIONAL RAILROAD ADJUSTMENT BOARD, THIRD DIVISION,

Respondent,

and

GEORGE P. BAKER, RICHARD C. BOND and JERVIS LANGDON, JR., as Trustees of the Property of PENN CENTRAL TRANSPORTATION COMPANY, Debtor,

Intervening Respondents.

BRIEF OF INTERVENING RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Questions Presented

The questions presented by Petitioner were either not raised in any court below or are not within the record before this Court.

The sole question before this Court is whether a district court has any jurisdiction under 45 U.S.C. § 153 First (q)

to review an award of the National Railroad Adjustment Board where there is no proof of a failure to comply with the requirements of the Railway Labor Act and no proof of the Board's acting outside of its jurisdiction and no proof of fraud or corruption on the part of any member of the Board making the award.

Statement of the Case

Petitioner originally brought two separate claims to the National Railroad Adjustment Board after losing out in processing these two claims through the channels provided by his union's collective bargaining agreement. The Board denied relief in Award No. 19554 and Award No. 19454.

Petitioner then commenced two actions in the United States District Court for the Eastern District of New York to review the Board's denial of relief (73 Civ. 717 and 73 Civ. 901). The Board, a purely nominal party defendant, took no part in the court proceedings then or later. Petitioner's employer (the Trustees of Penn Central Transportation Company), as the real party in interest, on written motion was granted leave to intervene.

The two cases were assigned to Judge Weinstein, who held a hearing on the Trustees' motions to dismiss the two complaints and granted the motions.

The Court of Appeals for the Second Circuit affirmed unanimously, on the opinion of Judge Weinstein.

At no time has petitioner sought relief by taking his grievances before the Arbitration Committee established by the Merger Protective Agreement of May 20, 1964 between petitioner's former employer, The New York Central Railroad Company, and the Pennsylvania Railroad Company. These two railroads merged on February 1, 1968. The merged railroad, now known as Penn Central Transportation Company, is undergoing reorganization under a trusteeship pursuant to Section 77 of the Bankruptcy Act.

Petitioner originally was employed as a clerk in the Grand Central Terminal ticket office of The New York Central Railroad Company in New York City. After the merger of the two railroads, he was transferred to Pennsylvania Station in New York City.

Award No. 19554 and 73 Civ. 717 concern his complaint that under the collective bargaining agreement of The New York Central Railroad Company annual vacations began after an employee's last weekly rest day, while under the present collective bargaining agreement vacations begin on Saturdays regardless of when an employee's last weekly rest day occurred.

Award No. 19454 and 73 Civ. 901 concern his complaint that certain pass privileges on intercity passenger trains were lost after the National Railroad Passenger Corporation (commonly called "Amtrak") assumed responsibility for the operation of the Trustees' intercity passenger trains on May 1, 1971. Subsequently, the lost privileges were for all practical purposes restored by Amtrak. The matter of pass privileges had not been covered in the collective bargaining agreements of the railroad here involved because passes were treated as gratuities, issuable on whatever terms the employer saw fit to utilize, and not as a subject for collective bargaining.

Reasons for Denying the Petition

This petition involves only well established federal law, and involves no conflict of decisions, no situation calling for this Court's supervision, no important or novel federal questions, and no constitutional issues (despite petitioner's vague contrary assertions).

Issues not raised by petitioner in the courts below or not in the record will not normally be considered by this Court.

Lawn v. *U.S.*, 355 U.S. 339 (1958);
Waterloo Distilling Corp. v. *U.S.*, 282 U.S. 558 (1931).

Section 3 First (i) of the Railway Labor Act, 45 U.S.C. § 153 First (i), provides that "disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions" are to be handled by the National Railroad Adjustment Board.

Section 3 First (m) of the Railway Labor Act, 45 U.S.C. § 153 First (m), makes awards of the Board "final and binding on both parties to the dispute."

> *Union Pacific RR* v. *Price*, 360 U.S. 601 (1959); *Gunther* v. *San Diego & Eastern Ry.*, 382 U.S. 257 (1965).

Section 3 First (q) of the Railway Labor Act, 45 U.S.C. § 153 First (q), allows a review of an award of the Adjustment Board by a federal district court, but states:

> ". . . On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order."

It is well settled that no review of an award of the Adjustment Board is permitted in the District Court unless the ground of review is one of those enumerated in subdivision (q).

> *Andrews* v. *Louisville & Nashville RR*, 406 U.S. 320 (1972).

The record in the case at bar presents no such ground of review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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